

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,
Plaintiff,
v.
BARAONA, *et al.*,
Defendants.

Case No. 1:21-cv-01448-DAD-BAM (PC)
ORDER TO SHOW CAUSE WHY
DEFENDANTS MARTINEZ, MEIERS, AND
A. CRUZ SHOULD NOT BE DISMISSED
FROM THIS ACTION FOR FAILURE TO
PROVIDE SUFFICIENT INFORMATION TO
EFFECTUATE SERVICE
(ECF No. 17)

THIRTY (30) DAY DEADLINE

Plaintiff Durrell Anthony Puckett (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s first amended complaint against: (1) Defendants Baraona, Burneszki, Leos, Hernandez, Diaz, and Doe 1 for excessive force in violation of the Eighth Amendment; (2) Defendant Leos for sexual assault in violation of the Eighth Amendment; and (3) Defendants A. Ruiz, Martinez, E. Ruiz, K. Cronister, and Jane Doe Nurse for failure to protect in violation of the Eighth Amendment.

On March 17, 2022, the Court issued an order directing service on Defendants Baraona, Burneszki, Leos, Hernandez, Diaz, A. Ruiz, Martinez, E. Ruiz, Meiers, Gutierrez, A. Cruz, and K. Cronister in this case under the Court’s E-Service pilot program for civil rights cases for the Eastern District of California. (ECF No. 17.) The order included the following information

1 regarding Defendants A. Ruiz, Martinez, and Meiers:

2 Correctional Officer A. Ruiz; Corcoran; January 20, 2021
3 Dr. Martinez; Corcoran; January 20, 2021
4 Correctional Officer Meiers; Corcoran; January 20, 2021

5 (Id. at 2.) On April 21, 2022, the Court received information that Defendants Martinez, Meiers,
6 and A. Ruiz could not be identified.

7 Federal Rule of Civil Procedure 4(m) provides as follows:

8 If a defendant is not served within 120 days after the complaint is filed, the
9 court—on motion or on its own after notice to the plaintiff—must dismiss the
10 action without prejudice against that defendant or order that service be made
11 within a specified time. But if the plaintiff shows good cause for the failure, the
12 court must extend the time for service for an appropriate period.

13 Fed. R. Civ. P. 4(m).

14 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the
15 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
16 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
17 summons and complaint, and . . . should not be penalized by having his or her action dismissed
18 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
19 duties required of each of them” *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990). “So
20 long as the prisoner has furnished the information necessary to identify the defendant, the
21 marshal’s failure to effect service is ‘automatically good cause’” *Walker v. Sumner*, 14 F.3d
22 1415, 1422 (9th Cir. 1994), abrogated on other grounds by *Sandin v. Connor*, 515 U.S. 472, 115
23 (1995). However, where a *pro se* plaintiff fails to provide the Marshal with accurate and
24 sufficient information to effect service of the summons and complaint, the Court’s *sua sponte*
25 dismissal of the unserved defendant is appropriate. *Walker*, 14 F.3d at 1421–22.

26 Here, the U.S. Marshal attempted to electronically serve Defendants Martinez, Meiers,
27 and A. Ruiz with the information that Plaintiff provided. However, the Marshal was informed by
28 that there was not enough information to identify Defendants Martinez, Meiers, and A. Ruiz for
service of process. If Plaintiff is unable to provide the Marshal with the necessary information to
identify and locate these defendants, Defendants Martinez, Meiers, and A. Ruiz shall be

1 dismissed from this action, without prejudice.

2 Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause
3 why Defendants Martinez, Meiers, and A. Ruiz should not be dismissed from the action at this
4 time. Plaintiff may respond to this order by providing additional information that will assist the
5 Marshal in identifying Defendants Martinez, Meiers, and A. Ruiz for service of process.

6 Based on the foregoing, it is HEREBY ORDERED that:

- 7 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show cause
8 why Defendants Martinez, Meiers, and A. Ruiz should not be dismissed from this action;
9 and
- 10 2. **The failure to respond to this order or the failure to show cause will result in the**
11 **dismissal of any unidentified defendant from this action due to Plaintiff's failure to**
12 **serve process pursuant to Federal Rule of Civil Procedure 4(m).**

13 IT IS SO ORDERED.

14 Dated: April 22, 2022

15 /s/ Barbara A. McAuliffe
16 UNITED STATES MAGISTRATE JUDGE

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